MDR: M4-02-2145-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 02/27/01?
   b. The request was received on 02/26/02.

II. EXHIBITS

1. Requestor, Exhibit 1:

   a. TWCC 60 and Letter Requesting Dispute Resolution dated 04/22/02
   b. HCFA's/UB-92 1450
   c. EOB
   d. EOBs/List of reimbursements from other carriers
   e. Medical Records
   f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit 2:

   a. TWCC 60 and Response to a Request for Dispute Resolution dated 04/30/02
   b. HCFA's UB-92 1450s
   c. EOB
   d. Carrier's Methodology
   e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/24/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 04/24/02. The 14 day response from the insurance carrier was received in the Division on 04/30/02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:

> "The most common CPT codes utilized by (the Provider) involve treatment, services, and supplies that do not have a maximum allowable reimbursement (MAR). Therefore, (the Provider) made an extensive review of payments and reimbursements made by various Carriers from the geographical area of Texas for treatment, services and supplies utilized for both work-related and non-work related injuries. As a result of that review, (the Provider) was able to determine the usual amounts reimbursed by Carriers for treatment, services, and supplies from the Provider for both work-related and non-work related treatment in the state of Texas at their facility." Additional reimbursement is sought in the amount of $10,211.43 for date of service 02/27/01.

2. Respondent:

> "The Requestor has attempted to develop its own methodology and purports that this establishes the appropriate figure for 'fair and reasonable'. A close look at this methodology reveals that it is based on the Requestors costs. The Requestors letter on the second page, in the second paragraph state 'The rates charged by (Provider) encompass the actual costs of the equipment utilized by the treating doctor and reflect a fair and reasonable charge for such equipment'. Judge___ her decision in SOAH Docket No. 453-99-1318.M4 stated that a cost-based reimbursement rate is improper. Under TWCC Rules, the reimbursement rate is not based on the provider's actual costs, but a reasonable rate as determined by market forces and averages. The Requestors cost based methodology does not show that its charges are fair and reasonable."

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 02/27/01.

2. The Provider billed $11,236.47 for the date of service 02/27/01.

3. The Carrier paid $1,025.04 for the date of service 02/27/01.

4. The amount in dispute per the TWCC-60 is $10,211.43.

5. The carrier has denied additional reimbursement for the date of service 02/27/01 as "M-No MAR/ASC reimbursement is based on fees established to be fair and reasonable in your geographical area."

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a) (4) states ASC(s) "…shall be reimbursed at a fair and reasonable rate…"

Texas Labor Code Section 413.011 (d) states, "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The provider has submitted reimbursement data. In an effort to show inconsistent application by the carrier of its methodology, the provider has submitted several EOBs, which indicate the provider has received from this carrier higher reimbursement, as a percentage of the billed amount, than was received on the date of service in dispute. These EOBs have several different ICD-9 codes, and a wide range in the amount billed. The provider has also submitted several EOBs from other carriers, these EOBs show a higher percentage of the billed amount reimbursed and have the same ICD-9 code as the date of service in dispute. The wide range in amounts billed would indicate that not all are for similar treatment. In addition, the provider has submitted a reimbursement log of other EOBs. This list shows the date of service, the amount billed, amount reimbursed, percentage of the billed amount reimbursed, and the payer of the bill. The list shows a wide range in the amount billed and in the amount of reimbursement received as a percentage. The list contains no references to the treatments/services performed and no ICD-9 codes.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what is fair and reasonable. The provider has submitted EOBs in an effort to document fair and reasonable reimbursement. The burden remains on the provider to prove that the amount of reimbursement requested is fair and reasonable. Recent SOAH decisions have placed minimal value on EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near 100% of the billed charges do not necessarily document that the billed amount is fair and reasonable, or are they an indication of effective medical cost control which is a criteria identified in Sec. 413.011 (d) of the Texas Labor Code. The EOBs prove no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor is not entitled to additional reimbursement.

The above Findings and Decision are hereby issued this 14th day of June, 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.